



**ఆంధ్రప్రదేశ్ రాజ పత్రము**  
**THE ANDHRA PRADESH GAZETTE**  
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**PART II - MISCELLANEOUS NOTIFICATIONS OF INTEREST TO THE PUBLIC**

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**NOTIFICATIONS BY HEADS OF DEPARTMENTS Etc.,**

**PRINCIPAL SENIOR CIVIL JUDGE COURT,  
NELLORE.**

**I.P. No. 01/2015**

Katakam Suneetha

...Petitioner/Creditor

Vs

1. Golagana Brahmaiah
2. Golagana Appa Rao
3. Dali Chandh
4. Katakam Usha Rani
5. Katakam Venkata Suresh Babu

...Respondents

**NOTICE**

Notice is hereby given Under Section 19 (2) of the Provincial Insolvency Act that the petitioner prays to adjudicate of Respondent No.1 as insolvent and the said petition is allowed.

Dated this the 15<sup>th</sup> day of July, 2019.

**T. HARITHA,**  
*Principal Senior Civil Judge,*  
*Nellore.*

**PRINCIPAL SENIOR CIVIL JUDGE COURT,  
NELLORE.**

**I.P. No. 01/2015**

Katakam Suneetha, W/o.Venu Gopal Rao,  
Hindu, aged about 42 years, Housewife,  
Residing at 12/548, Upstairs,  
Narayanaraopet, Nellore-1,  
SPSR Nellore District.

... Petitioner (Creditor)

Vs.

1. Golagana Brahmaiah, S/o. Surya Narayana,  
Hindu, aged about 35 years,  
Residing at D.No.20/1258,  
Vigneswarapuram, Kotamitta, Nellore.
2. Golagana Appa Rao, S/o. Surya Narayana,  
Hindu, aged about 29 years,  
Residing at D.No.20/1258,  
Vigneswarapuram, Kotamitta, Nellore.
3. Dalichandh, S/o. Javanmaljee,  
Hindu, aged about 25 years,  
Residing at Giddangi Veedhi,  
Nellore-I.
4. Katakam Usha Rani,  
W/o.Venkata Suresh Babu,  
Hindu, aged about 35 years,  
Residing at Door No.16/1/593,  
Madyapathivari Veedhi, Nellore-1,  
SPSR Nellore District.
5. Katakam Venkata Suresh Babu,  
S/o. Late Chinna Rangaiah Hindu, aged about 36 years,  
Residing at Door No.16/1/593,  
Madyapathivari Veedhi, Nellore-1,  
SPSR Nellore District.

... Respondents

This petition coming on 12.06.2019 for final hearing before me in the presence of Sri N. Venkaeswara Rao, Advocate for the Petitioner and the respondents 1 and 2 remained exparte, and Sri.K.M.Krishna, Advocate for the 3<sup>rd</sup> respondent, and Sri.S.Srinivasa Murthy, Advocate for the respondents 4 and 5, and the matter having stood over for consideration till this day, this Court made the following:

### **ORDER**

The petitioner/creditor filed this insolvency petition against the respondents 1 to 5 under Section.9 of Provincial Insolvency Act, 1920 to adjudge the 1<sup>st</sup> respondent as insolvent; and to set aside the registered sale deeds Dated: 19-09-2014, 24-09-2014 and 24-09-2014 bearing Doc.Nos.8395/2014, 8523/2014 and 8524/2014 in total executed by the 1<sup>st</sup> and 2<sup>nd</sup> respondents jointly in favour of the respondents 3 to 5 to the extent of undivided half share of the property of the 1<sup>st</sup> respondent in the three sale deeds; and to direct the Official Receiver, Nellore to take possession of the undivided half share of the 1<sup>st</sup> respondent in the petition schedule property and to deal with the property as per the provisions of Provincial Insolvency Act.

**2) The brief averments in the petition are as follows** The 1<sup>st</sup> respondent borrowed an amount of Rs.2,80,000/- on 08-03-2012 from the petitioner and executed a promissory note in favour of the petitioner on the even date ie., 08-03-2012 agreeing to repay the same with interest at the rate of 24% per annum for valid consideration paid. The respondents 1 and 2 are brothers and they are the sons of Surya Narayana. They purchased the petition schedule property under registered sale deed dt.27-04-2011 jointly and they were in possession and enjoyment of the same. They had ( $\frac{1}{2}$ ) half share each. The Petition schedule property was purchased by respondents 3 to 5 and the respondents 4 and 5 are the Wife and Husband. Respondents 1 and 2 together jointly sold the petition schedule property of their undivided  $\frac{1}{2}$  share each in the said property. The 2<sup>nd</sup> respondent sold the property along with the 1<sup>st</sup> respondent jointly and executed sale deed jointly, hence, the 2<sup>nd</sup> respondent is added as a proforma respondent. The 1<sup>st</sup> respondent failed to discharge the debt due under the instrument Dt:08-03-2012 inspire of several demands made by the petitioner. Hence, the petitioner filed OS No.580/2014 on the file of I Addl. Senior Civil Judge, Nellore and the same is pending for disposal. With an intention to defraud the creditors, the 1<sup>st</sup> respondent making efforts to alienate his property along with his brother ie., 2<sup>nd</sup> respondent, hence, the petitioner filed an attachment petition along with suit, and the respondent got filed Vakalath and opposed the said petition. The 1<sup>st</sup> and 2<sup>nd</sup> respondents jointly executed registered sale deeds in favour of respondents 3 to 5 under Document Nos.8395/2014, Dt: 19-09-2014 and 8523/2014 Dt: 24-09-2014 and 8524/2014, Dt: 24-09-2014 respectively. The 3<sup>rd</sup> respondent purchased Item No.1 of Petition Schedule property and the 4<sup>th</sup> respondent purchased the Item No.2 of Petition Schedule property and the 5<sup>th</sup> respondent purchased the Item No.3 of the Petition Schedule property The 1<sup>st</sup> respondent has no other immovable properties. The transaction made between the respondent are void and they are fraudulent transfer. Thus, the 1<sup>st</sup> respondent committed an act of Insolvency. The 1<sup>st</sup> respondent executed the sale deeds in collusion with the 2<sup>nd</sup> respondent in favour of respondents 3 to 5 relating to the petition schedule property to defraud the creditors and it is an act of insolvency. Hence, the 1<sup>st</sup> respondent is liable to be declared as insolvent. Hence, the petitioner constrained to file this petition for adjudicating

the 1<sup>st</sup> respondent as insolvent and set aside the registered sale deeds executed by the 1<sup>st</sup> respondent in favour of respondents 3 to 5. The respondents 3 to 5 are the vendees, as such they are proper and necessary parties to the petition. The petition is filed within 90 days from the date of registration of the sale deeds. Prays to allow the petition.

3) Notices were issued to respondents 1 to 5. Respondents 1 and 2 received summons, they did not make their appearance before this court. Hence, they were set exparte. Respondents 1 and 2 remained exparte. The respondents 3 to 5 filed their Counters.

**4) The brief averments of the counter of the 3<sup>rd</sup> respondent are that:-** He denied the contents of petition and admitted that Respondents 1 and 2 are brothers and sons of Surya Narayana. Respondents 1 and 2 jointly sold the petition schedule property to respondents 3 to 5. He purchased Item No.1 of the petition schedule property. He denied the remaining contents with regard to other allegations. He further submitted that respondents 1 and 2 availed loan in Karnataka Bank Limited at Goturu Vari Street, Brindavanam, Nellore and obtained mortgage loan for a sum of Rs.9,90,000/-. After negotiations he paid a sum of Rs.3,58,000/- to the account number of 1<sup>st</sup> respondent in Karnataka Bank, Nellore on 19-09-2014 through RTGS from his account situated at City Union Bank, Nellore on the same day i.e., on 19-09-2014. This respondent paid another sum of Rs.3,58,000/- through RTGS to the account of 2<sup>nd</sup> respondent. He gave account numbers of respondents 1 and 2. Thus, he paid entire sale consideration of the amount to the respondents 1 and 2 by way of RTGS. The Karnataka Bank, Nellore to that effect issued clearance letter dt.19-09-2014. Accordingly, this respondent paid his sale consideration amount by way of RTGS transfer, not by cash. As on the date of his purchase, Respondents 1 and 2 having property of their own in Korada Street, Chinna Bazaar, Nellore. It is situated in very busy and commercial locality and having a high market value. The said fact is well known to the petitioner. Even though the respondents 1 and 2 are having own property, intentionally this petitioner filed this present case against this respondent. This respondent purchased the property prior to the purchase of respondents 4 and 5. There is no collusion between them. The petitioner falsely claiming that 1<sup>st</sup> respondent executed promissory note in her favour. With an evil intention in their mind, they sold the property and now filed the present petition with the help of this petitioner. There is no cause of action for the filing this petition. Prays to dismiss the petition.

**5) The brief averments of the counter of the respondents 4 and 5 are that :-** They denied the contents of the petition and admitted that respondents 1 and 2 are brothers and they are sons of Surya Narayana and they jointly purchased the property under sale deed Dt: 27-04-2011 and they got undivided  $\frac{1}{2}$  share each in the petition schedule property. This respondents purchased the petition schedule property from the respondents 1 and 2 and respondents 4 and 5 are the wife and husband. They admitted 2<sup>nd</sup> respondent jointly executed the

registered sale deed along with 1<sup>st</sup> respondent. They further submitted that Item Nos.1 to 3 properties are adjacent to each other and forms a compact block of about 12 ankanams. The respondents 1 and 2 are joint owners of the said property. Without ascertaining the share of the 1<sup>st</sup> respondent present petition is not maintainable. Respondents 1 and 2 for their necessities sold the said 12 ankanams as three parts and the 4<sup>th</sup> respondent purchased Item No.2 of the petition schedule property and the sale consideration of Rs.12,09,000/- was kept in fixed deposit in State Bank of India, Chinna Bazaar Branch, Nellore in the names of the respondents 1 and 2. If really the claim of the petitioner is genuine, he could have attached the above said sale proceeds. The petitioner is not entitled to file this petition. The respondents 1 and 2 sold the property for their necessities and the sale deeds are supported by consideration. The sale consideration amount of Rs.1,23,000/- which was paid by the 5<sup>th</sup> respondent was kept in fixed deposit in State Bank of India, Chinna Bazaar Branch, Nellore in the names of respondents 1 and 2 and the said FD receipt was handed over to the respondents 1 and 2 towards the sale consideration. If the debt is genuine, the petitioner ought to have attached the said amount and realised the same. The petitioner is not entitled to file the present petition. There is a collusion between the petitioner and the 1<sup>st</sup> respondent, they might have created promissory note and got filed the suit for wrongful gain. Their sales are genuine sales and they cannot be set aside. Sale deeds were supported by consideration. Petitioner is not entitled to question the said sale deeds. They made all reasonable enquires and purchased the said properties. Prays to dismiss the petition.

6) The Petitioner in support of her version, she herself got examined as PW1 and Exs.A1 to A5 are marked. Petitioner evidence closed. On behalf of the 3<sup>rd</sup> respondent, he himself got examined as RW.1 and one 3<sup>rd</sup> party to the petition is examined as RW,2 and no documents were marked. Respondents 4 and 5 did not cross-examine PW.1. Respondent Nos.1, 2 4 and 5 not adduced any evidence. Hence, Respondents evidence closed.

7) Heard both sides.

8) Now, the points for determination is:

- 1. Whether there is a debtor and creditor relationship between petitioner and 1<sup>st</sup> respondent?**
- 2. Whether there are any grounds to declare the 1<sup>st</sup> respondent as an insolvent as he committed an act of insolvency by alienating the petition schedule property?**
- 3. Whether the sale deed executed by 1<sup>st</sup> respondent along with 2<sup>nd</sup> respondent in favour of 3<sup>rd</sup> respondent is liable to be canceled?**
- 4. Whether the sale deeds executed by 1<sup>st</sup> respondent along with 2<sup>nd</sup> respondent in favour of 4<sup>th</sup> and 5<sup>th</sup> respondents are liable to be canceled?**

9) The counsel for the petitioner submitted that 2<sup>nd</sup> respondent is proforma party and brother of 1<sup>st</sup> respondent. Suit is filed against 1<sup>st</sup> respondent and the same was decreed. Prays to declare the 1<sup>st</sup> respondent as insolvent. The 3<sup>rd</sup> respondent did not file the compliance certificate issued by the bank to prove he paid bank loan amount on behalf of the 1<sup>st</sup> respondent to bank for clearing the 1<sup>st</sup> respondent's debt. 3<sup>rd</sup> respondent not filed any document to show 1<sup>st</sup> respondent had other properties apart from petition schedule property. Prays to allow the petition.

10) The counsel for the 3<sup>rd</sup> respondent submitted that petition filed under Section.9 of Provincial Insolvency Act and petitioner is a creditor, 1<sup>st</sup> and 2<sup>nd</sup> respondents jointly sold Item No.1 of the petition schedule property to the 3<sup>rd</sup> respondent and Item Nos.2 and 3 of the petition schedule property to the 4<sup>th</sup> and 5<sup>th</sup> respondents. Respondents 4 and 5 were remained exparte. RW.1 not filed any documents. Suit against 1<sup>st</sup> respondent was decreed in OS No.585/2014 and no attachment order was obtained by the petitioner in OS No.585/2014. IP is filed in the month of December, 2014. PW.1 in cross-examination admitted, by the date of selling Item No.1 to the 3<sup>rd</sup> respondent, 1<sup>st</sup> respondent having properties. 3<sup>rd</sup> respondent purchased the property under Ex.A3 Dt: 19-09-2014 and the respondents 4 and 5 purchased the property under Exs.A4 and A5 on 24-09-2014. After selling the property to 3<sup>rd</sup> respondent, respondents 1 and 2 had the properties and sold the same to respondents 4 and 5 under Exs.A4 and A5. As on the date of his purchase 1<sup>st</sup> respondent had properties, hence, 3<sup>rd</sup> respondent's sale deed is not liable to be cancelled. No paper publication was made by PW.1 for the debts of respondents 1 and 2. 3<sup>rd</sup> respondent paid entire sale consideration by way of RTGS, no cash was paid. His transaction is very genuine transaction. He is a bonafide purchaser. His sale is supported by consideration. Prays to dismiss the petition with regard to his sale deed.

11) PW.1 reiterated the contents of petition in his chief examination affidavit. During cross-examination he deposed respondents 4 and 5 are his relatives and they are dayadis. He know respondents 1 and 2 since 2012. He filed suit in OS No.584/2014 against 1<sup>st</sup> respondent on the file of I Addl. Senior Civil Judge, Nellore for recovery of amount. He did not file petition for attachment before judgment relating to the present petition schedule property in OS No.584/2014. He admitted 3<sup>rd</sup> respondent purchased the Item No.1 of he petition schedule property under registered sale deed dt.19-09-2014 under document bearing No.8395/2014. In the same month the Item Nos.2 and 3 of the schedule properties are sold to respondents 4 and 5 on 24-09-2014. He further admitted that by the date of selling of Item No.1 to R3, that R1 and R2 are having properties under Exs.A4 and A5. There is mention in Ex.A3 sale deed stating the vendor had some other property apart from schedule property in Ex. A3, hence, he did not hand over original document to the vendee. If there is mention like that in Ex. A3, the 1<sup>st</sup> respondent do not have any other property, except the petition schedule property. He further admitted that adjacent the shop of 1<sup>st</sup> respondent,

the shop of 3<sup>rd</sup> respondent is situated. He do not know the property was purchased by the 3<sup>rd</sup> respondent is adjacent to his property on South East Corner, so that he can mix the property into his property. He do not know money was transferred by the 3<sup>rd</sup> respondent to the respondents Nos.1 and 2 through RTGS to their accounts. He do not know attachment not made absolute in OS No.580/2014 on the file of I Addl. Senior Civil Judge, Nellore. He do not know there is no partition between 1<sup>st</sup> and 2<sup>nd</sup> respondents. He did not publish notice to general public informing about attachment over the suit schedule property in OS No.580/2014 in any daily news paper. He denied a suggestion R3 purchased the property for their bonafide requirement and it is a genuine transaction. He denied a suggestion on the date of Ex. A3, R1 and R2 have got some other own properties. He denied a suggestion he filed the petition to grab money from respondent No.3 by colluding with R1 and R2. Exs. A1 and A2 are the certified copies of Judgment and decree in OS No.580/2014, Dt: 07-07-2015 on the file of I Addl., Senior Civil Judge, Nellore. Exs.A3 to A5 are the sale deeds executed by the respondents 1 and 2 in favour of respondents 3 to 5.

12) RW.1 reiterated the contents of counter in his chief-examination affidavit. During cross-examination he deposed he know respondents 1 and 2 since 10 years. Respondents 1 and 2 and himself doing business in same street. R1 and R2 are doing gold business and he is also doing gold business. He used to sell gold ornaments to R1 and R2. He do not have personal knowledge about the transaction between the petitioner and the 1<sup>st</sup> respondent. He do not know when respondents 1 and 2 purchased the petition schedule property. He did not file link documents. There is no agreement of sale between himself and respondents 1 and 2. He did not file the record pertaining to the payment of Rs.7,60,000/-. He added it is a bank transaction and made through RTG transfer. He did not file the record pertaining to the RTG transfer. He did not file any documentary evidence to show the details of properties of respondents 1 and 2 other than the petition schedule property. He denied a suggestion he did not file any documentary evidence to show there is his property towards South East Corner. He did not file clearance certificate issued by the Bank authorities. He do not know petitioner filed suit and got decree against respondents 1 and 2. He did not publish any caution notice in local news paper about the purchase of Item No.I of petition schedule property. He do not know how many creditors are there to 1<sup>st</sup> respondent. He denied a suggestion prior to his purchase, petitioner and her husband approached him and informed about the debt, inspite of that he purchased the petition schedule property, with a view to evade the debts, himself, R1 and R2 colluded together and got created nominal sale deed in his favour and the 1<sup>st</sup> respondent had no other properties, except petition schedule property. He added after selling petition schedule property to him, R1 and R2 sold 4 or 5 shops to others. He cannot say those details. He denied a suggestion the document is not valid with regard to half share of 1<sup>st</sup> respondent. He denied a suggestion that sale consideration amount was not paid by him to the 1<sup>st</sup> respondent.

13) RW.2 deposed on the date of purchase of Item No.1 of schedule property, an amount of Rs.3,58,000/- was transferred to the account of 1<sup>st</sup> respondent through RTGS and also another amount of Rs.3,58,000/- was transferred to the account of 2<sup>nd</sup> respondent through RTGS from his father's account to the mortgage loan of respondents 1 and 2. Thus, entire sale consideration amount was paid to 1<sup>st</sup> and 2<sup>nd</sup> respondents by way of RTGS. Thus, they paid the amount through bank transaction, not by way of cash. That itself proves the genuineness of transaction in purchasing the property. Respondents 1 and 2 are having properties in Korada Street, Chinna Bazaar Street, Nellore, those were situated in very busy and commercial locality. They are bonafide purchaser. They did not purchase the property to defraud or delay to the creditors of the respondents 1 and 2. The petitioner in collusion with 1<sup>st</sup> respondent filed this present petition for wrongful gain. Prays to dismiss the petition. During cross-examination, he deposed 3<sup>rd</sup> respondent is his father. He was present at the time of cross-examination of RW.1. He do not have personal knowledge about the facts mentioned by the petitioner and dates given in the petition. He do not know about the execution of promissory note, filing of suit, decree of suit against 1<sup>st</sup> respondent. There is no agreement of sale prior to the registration of sale deed between 1<sup>st</sup> and 3<sup>rd</sup> respondents. He admitted that he did not file any documentary evidence to show 1<sup>st</sup> respondent had other properties. They did not issue general notice to the public prior to their purchase. He denied a suggestion the sale deed executed by 1<sup>st</sup> respondent is void and no cash was paid to him and it was created with a view to defraud the creditors of 1<sup>st</sup> respondent.

**POINT No.I:- 1. Whether there is a debtor and creditor relationship between petitioner and 1<sup>st</sup> respondent ?**

14) The petitioner reiterated the contents of the petition in his chief-examination affidavit as PW1. In support of his version he filed decree and judgment in OS.No.580/2014. The contents of decree and judgment in OS No.580/2014 shows and proves the 1<sup>st</sup> respondent indebted an amount of Rs.2,88,213/- to the petitioner herein. As per the judgment in OS No.580/2014 it is established the petitioner herein is the creditor of 1<sup>st</sup> respondent. It appears that they did not file any execution petition so far. The evidence of PW.1, contents of Exs.A1 and A2 clearly shows and proves there is a debtor and creditor relationship between them. The respondents 1 and 2 not challenged the contents of the petition and contents of Exs.A1, A2. The respondents 3 to 5 are not competent persons to dispute the fact of debtor and creditor relationship between the petitioner and the 1<sup>st</sup> respondent. In view of unchallenged evidence of PW.1, contents of Exs.A1 and A2, petitioner is able to prove that 1<sup>st</sup> respondent borrowed amount from the petitioner under promissory notes, later failed to repay the amount along with interest. The petitioner filed a suit and obtained decree. The said fact was not disputed by the 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent did not raise any objection with regard to the non-payment of the amount claimed by the petitioner. In view of the non-appearance of the 1<sup>st</sup> respondent, this Court has presumed that there is no dispute with regard to actual amount due by the 1<sup>st</sup> respondent to the petitioner.



15) In view of the above discussion, the petitioner is able to prove, there is a debtor and creditor relationship between the petitioner and 1<sup>st</sup> respondent.

**Point No.1 is answered accordingly.**

**POINT NO. 2 : Whether there are any grounds to declare the 1<sup>st</sup> respondent as an insolvent as he committed an act of insolvency by alienating the petition schedule property?**

16) The petitioner has to prove the three conditions contemplated under Section.9 of Provincial Insolvency Act. As per the version of petitioner, total amount of debt due is Rs.2,88,213/-, that means amount due is more than Rs.500/-. The 1<sup>st</sup> respondent executed promissory note and it is an unsecured debt and payable on demand at future date. As per the Judgment in OS No.580/2014, 1<sup>st</sup> respondent did not pay the amount and the Court directed him to pay the amount. As per the version of petitioner, the 1<sup>st</sup> respondent along with 2<sup>nd</sup> respondent executed three different sale deeds in favour of respondents 3 to 5 on 19-09-2014, 24-09-2014 and 24-09-2014. The present petition is filed on 15-12-2014. That means the petition is presented within three months of the commission of the act of insolvency. There is no obligation on the part of the petitioner to implead all the creditors of the 1<sup>st</sup> respondent. He has to comply the requirement of Section.9 and 13 of Provincial Insolvency Act. As per the averments of the petition, the petitioner pleaded that the 1<sup>st</sup> respondent is residing at Nellore, within the jurisdiction of this Hon'ble Court, that is the requirement under Section. 13( 1)(b) of Provincial Insolvency Act. The petitioner pleaded the 1<sup>st</sup> respondent committed the act of insolvency on 19-09-2014, 24-09-2014 and 24-09-2014 in favour of petitioner by selling the schedule property to the respondents 3 to 5, that is the compliance under Section.13(2)(a) of Provincial Insolvency Act. The petitioner pleaded that the 1<sup>st</sup> respondent is indebted an amount of Rs.2,88,213/- and failed to discharge the debt due under the promissory note Dt: 08-03-2012 inspite of repeated demands made by him, hence he filed the suit and the same is pending. Thus, he complied the conditions under Section. 13(2)(b) of Provincial Insolvency Act.

17) The petitioner categorically pleaded the 1<sup>st</sup> respondent with a view to defraud and delay the creditors, sold the petition schedule property in favour of respondents 3 to 5. After selling petition schedule property in favour of respondents 3 to 5, 1<sup>st</sup> respondent has no other immovable properties and those are fraudulent transfers and those are void. Thus, the 1<sup>st</sup> respondent committed act of insolvency. The said fact was not denied by the 1<sup>st</sup> respondent either by filing counter or by cross-examining the witnesses. Thus, the petitioner is able to prove that the 1<sup>st</sup> respondent sold the property to defraud the creditors ie., the petitioner. Even a single creditor can maintain the petitioner. It appears the 1<sup>st</sup> respondent with a view to evade the due amount to the petitioner and defraud him and to defeat the interest of the creditors, executed the sale deeds

under Exs.A4 and A5 in favour of respondents 4 and 5. The said act is an act of insolvency. The respondents 4 and 5 did not deny the said fact, they did not state their sale deeds are not supported by consideration, they did not plead those are not nominal transfers, those are not fraudulent transfers. In view of unchallenged evidence of PW.1, contents of Exs.A1, A2, A4 and A5, this court has no other option, except to accept the case of the petitioner and to conclude that the 1<sup>st</sup> respondent committed an act of insolvency. Hence, the 1<sup>st</sup> respondent is liable to be adjudged as an insolvent.

**POINT No.3:- 3. Whether the sale deed executed by 1<sup>st</sup> respondent along with 2<sup>nd</sup> respondent in favour of 3<sup>rd</sup> respondent is liable to be canceled?**

18) In view of the discussion at point Nos.1 and 2, 1<sup>st</sup> respondent is liable to be adjudged as an insolvent and he executed Ex. A3 sale deed dt.19-09-2014 in favour of 3<sup>rd</sup> respondent with an ulterior motive to defraud the creditor i.e., petitioner herein. As on the date of execution of Ex.A3 sale deed dt.19-09-2014, he had other two properties under Exs.A4 and A5. Ex.A1 sale deed is for Rs.12,00,000/-. Even respondents 1 and 2 got equal shares, that means, property worth of Rs.6,00,000/- is still available with the 1<sup>st</sup> respondent and the 1<sup>st</sup> respondent has to discharge the amount to the petitioner. As on the date of execution of sale deed in favour of 3<sup>rd</sup> respondent, the 1<sup>st</sup> respondent had some other properties which are sufficient to meet the demand of the petitioner and the counsel for the petitioner brought to the attention of this court the sale deeds are supported by consideration and draw the attention of the court with regard to the contents of Ex.A3 registered sale deed. As per the contents of Ex.A3 sale deed, money was transferred to respondents 1 and 2 through RTGS. It appears the sale deed is supported by consideration. PW.I in his cross examination also admitted contents of Ex.A3 shows the 1<sup>st</sup> respondent had some other property apart from schedule property under Ex.A3. The contents of Ex.A3 also shows the 1<sup>st</sup> respondent had some other property apart from sale deed under Ex.A3. Hence, the sale deed of 3<sup>rd</sup> respondent executed by respondents 1 and 2 is not liable to be cancelled as void. Hence, the petition with regard to the relief that to set aside the sale deed of 3<sup>rd</sup> respondent is negatived and dismissed.

**POINT NO.4 4. Whether the sale deeds executed by 1<sup>st</sup> respondent along with 2<sup>nd</sup> respondent in favour of 4<sup>th</sup> and 5<sup>th</sup> respondents are liable to be canceled?**

19) The contents of Ex.A4 sale deed shows the sale transaction was for Rs.12,09,000/- and the sale consideration was kept in fixed deposit and the said fixed deposit was handed over to the 1<sup>st</sup> respondent, but the copy of the said fixed deposit was not enclosed to the sale deed. The respondents 1, 2, 4 and 5 did not make appearance before this Court and not disputed the fact that the sale deeds under Exs, A4 and A5 are not supported by consideration. They were fraudulent transactions and without any consideration they were executed to defeat the rights of the creditor i.e., the petitioner herein. As seen from the contents of Ex.A2, the plaint in OS No.580/2014 was presented on 22-09-2014. The petitioner categorically deposed along with suit, he also filed

petition under Order 38 Rule 5 of CPC to attach the plaint schedule property. The 1<sup>st</sup> respondent made appearance before the court, for that reason the Hon'ble Court did not attach the plaint schedule property. On the next day i.e., 24-09-2014, the 1<sup>st</sup> respondent along with 2<sup>nd</sup> respondent executed sale deeds in favour of respondents 4 and 5 under Exs. A4 and A5. If he really received consideration under Exs.A4 and A5, he could have discharged the debt of the petitioner with the sale consideration amount received by him under Exs. A4 and A5. Soon after the filing of the suit by the petitioner, transfer of Item Nos.2 and 3 of petition schedule property in favour of Respondents 4 and 5 appears to be made with a view to defraud the creditor and those are fraudulent transactions. The respondents 1, 2, 4 and 5 did not deny the contents of petition and evidence of PW.1.

20) In view of the above discussion, the petitioner is able to prove that Exs.A4 and A5 sale deeds are fraudulent transactions made with a view to defraud the creditor ie., the petitioner. The petition is filed within 90 days from the date of execution of sale deeds. Hence, the sale deeds under Exs.A4 and A5 are liable to be set aside.

21) In the result, insolvency petition is allowed with costs adjudging the 1<sup>st</sup> respondent as an insolvent.

The sale deed bearing Doc.No.8395/2014 dated 19.09.2014 executed by the 1<sup>st</sup> respondent along with 2<sup>nd</sup> respondent jointly is not liable to be cancelled or not liable to be declared as void. The relief relating to the said document is negatived and the petition is dismissed with regard to the cancellation of sale deed Dt: 19-09-2014 with regard to Item No.1 of Petition Schedule property.

The sale deeds bearing Doc.No.8523/2014, Dt: 24-09-2014 and Doc.No.8524/2014, dated 24.09.2015 executed by the 1<sup>st</sup> respondent along with 2<sup>nd</sup> respondent jointly on the file of Joint Sub-Registrar, Nellore is set aside with regard to the Item Nos.2 and 3 of the petition schedule property.

As per Sec.27 of Insolvency Act, 1920, 1<sup>st</sup> respondent shall apply within 2 months from the date of this order for his discharge.

Publish an order of adjudication as per Sec.30 of Provincial Insolvency Act in Official Gazette with details of notice of order of adjudication stating the name, address, description of the insolvent, date of adjudication, the period within which the debtor shall apply for his discharge and the Court by which the adjudication is made in the manner as prescribed.

As per Sec.28 (2) of Provincial Insolvency Act, 1920 petition schedule property i.e., Item Nos.2 and 3 of Petition schedule property belongs to 1<sup>st</sup> respondent/insolvent shall forthwith vest in the Court and which then upon vests in Official Receiver U/Sec.56 (1) of Provincial Insolvency Act, 1920. The possession also vests with the Official Receiver.

As per Sec.28(7) of Provincial Insolvency Act, 1920 after order of adjudication shall relate back to and take effect from the date of presentation of petition on which it is made i.e., 15.12.2014.

The Office is directed to forward copy of order to the Official Receiver.

The Office is directed to forward copy of order drafted on plain paper to the Sub-Registrar, Nellore under Rule 149 of Civil Rules of Practice.

For filing publication made in Official Gazette call on 16-09-2019.

Dictated to the stenographer, transcribed by her, corrected and pronounced by me in the open court on this the 15<sup>th</sup> day of July, 2019.

**T. HARITHA,**  
*Principal Senior Civil Judge,*  
*Nellore.*

### **APPENDIX OF EVIDENCE**

Witnesses examined

**For petitioner**

PW1: K.Sunitha

**For 3<sup>rd</sup> respondent**

RW.1 : Dalichand

RW.2 : Bharath Kumar

### **Documents marked**

**For petitioner**

Exhibit	Date	Description of the document
A1	07.07.2015	Certified copy of Judgment in OS No.580/2014 on the file of I Addl. Senior Civil Judge, Nellore.
	07.07.2015	Certified copy of Decree in OS No.580/2014 on the file of I Addl. Senior Civil Judge, Nellore.
A3	19.09.2014	Certified copy of Registered Sale deed bearing Document No.8395/2014 executed by the respondents 1 and 2 jointly in favour of the 3 <sup>rd</sup> respondent.
A4	24.09.2014	Certified copy of Registered Sale deed bearing Document No.8523/2014 executed by the respondents 1 and 2 jointly in favour of the 4 <sup>th</sup> respondent.
A5	24.09.2014	Certified copy of Registered Sale deed bearing Document No.8395/2014 executed by the respondents 1 and 2 jointly in favour of the 3 <sup>rd</sup> respondent.

**For respondents :** NIL.

**T. HARITHA,**  
*Principal Senior Civil Judge,*  
*Nellore.*